

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1484 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NARSINHBHAI KALIDAS PATEL

Versus

PUNAMCHAND HANUMANJI

Appearance:

1. Civil Revision Application No. 1484 of 1995
MR NILESH A PANDYA for Petitioner No. 1
NOTICE SERVED for Respondent No. 1
MR JR SHAH for Respondent No. 2
MR AV TRIVEDI for Respondent No. 3
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CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 22/03/2002

ORAL JUDGEMENT

1. Petitioner - original claimant, who had sustained injuries in an accident which took place on 22.4.89, had filed this Revision Application and challenged the order passed by the M.A.C.Tribunal, Banaskantha District at

Palanpur dated 31.5.1993 while deciding the application of the petitioner being C.M.A.No.205/90 whereby the Tribunal has held that the claim petition is filed beyond the period of limitation and accordingly while deciding the preliminary issue, the Tribunal has held that the Application for condonation of delay deserves to be dismissed and the application praying for condonation of delay in filing the claim petition was accordingly dismissed.

2. Mr.Pandya appearing for the petitioner has taken me through the application and the order under challenge.As found from the application as well as from the order under challenge, it is the case of the petitioner that he has sustained injuries in an accident which took place on 22.4.89 at about 4.30 P.M. on Ambaji Koteswar State Highway. The vehicle involved in the accident is a Fiat Motor Car bearing No.GAE 3480 driven by opponent No.1 and belonging to opponent No.2. It is also the case of the petitioner that the said car was insured by United India Insurance Co.Ltd. - respondent No.3 herein. In respect of the injuries sustained by him the petitioner has filed Application claiming compensation, which was delayed by 1 year 1 month and 8 days and accordingly such application was filed beyond period of limitation. The Tribunal has, considering the said application and considering the provisions of Motor Vehicles Act,namely, Sections 166(3) and 110A(3) and the decision of the Apex Court reported in 1991 (4) SCC 333 as well as the decision reported in 1992(1) GLH 367 and other decisions of the Apex Court, held that such claim application is filed beyond period of 6 months and in view of the provisions of the M.V. Act, claim petition filed by the petitioner could not be entertained and accordingly rejected the said Application. The petitioner has accordingly approached this court and this court has issued rule, which was made returnable on 15.4.96. Though rule was made returnable on 15.4.96, the matter is still pending and accordingly Mr.Pandya has placed reliance upon the decision in the matter of Dhannalal v. D.P.Vijayvargiya, reported in (1996) 4 SCC 652. Mr. Pandya has vehemently urged that as per the decision of the Apex court, the matter is squarely covered and accordingly the order passed by the Tribunal deserves to be set aside and the claim petition filed by the petitioner is required to be entertained on merits.

3. As observed by the Apex court in the said case, the Apex court has considered the provisions of the amended Act, wherein the limitation for filing such complaint was deleted and the Supreme Court has, while

quoting the said sub-Section, observed as under:-

"158(6). As soon as any information regarding any accident involving death or bodily injury to any person is recorded or report under this section is completed by a police officer, the officer in charge of the police station shall forward a copy of the same within thirty days from the date of recording of information or, as the case may be, on completion of such report to the Claims Tribunal having jurisdiction and a copy thereof to the concerned insurer, and where a copy is made available to the owner, he shall also within thirty days of receipt of such report, forward the same to such Claims Tribunal and insurer"

"In view of sub-section (6) of Section 158 of the Act the officer-in-charge of the police station is enjoined to forward a copy of information/report regarding the accident to the Tribunal having jurisdiction. A copy thereof has also to be forwarded to the insurer concerned. It also requires that where a copy is made available to the owner of the vehicle, he shall within thirty days of receipt of such copy forward the same to the Claims Tribunal and insurer. In this background, the deletion of sub-section (3) from Section 166 should be given full effect so that the object of deletion of the said section by Parliament is not defeated. If a victim of the accident or heirs of the deceased victim can prefer claim for compensation although not being preferred earlier because of the expiry of the period of limitation prescribed, how the victim or the heirs of the deceased shall be in a worse position if the question of condonation of delay in filing the claim petition is pending either before the Tribunal, the High Court or the Supreme Court. The present appeal is one such case. The appellant has been pursuing from the Tribunal to this Court. His right to get compensation in connection with the accident in question is being resisted by the respondents on the ground of delay in filing the same. If he had not filed any petition for claim till 14.11.1994 in respect of the accident which took place on 4.12.1990, in view of the amending Act he became entitled to file such claim petition, the period of limitation having been deleted, the claim petition which has been filed and is being pursued up to this Court cannot be thrown out on the ground of limitation."

4. As found, the Tribunal has, while rejecting the C.M.A.No.205/90, treated the claim petition filed by the

petitioner as time barred. However, in view of the amending Act and as observed by the Supreme Court surely the delay in filing claim petition is required to condoned and the Tribunal is required to entertain the claim petition filed by the petitioner. In view of the above, the Revision Application filed by the petitioner succeeds. Rule is made absolute. However, there will be no order as to costs. The Tribunal is directed to take claim petition of the petitioner on hand and decide the same in accordance with law as expeditiously as possible, looking to the fact that the accident in question had taken place on 22.4.1989. Office is directed to send writ forthwith to the Tribunal.

(D.K.Trivedi,J)

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